

Amendment to Contract Documents

Enterprise Agreement
Amendment ID CTM

Agreement Number

000-sharom-f18-
NAVY007

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

The Enterprise Agreement is hereby amended by replacing Appendix A to the Enterprise Agreement (EA) in its entirety with the following:

**DEPARTMENT OF NAVY MASTER LICENSE AGREEMENT FOR MICROSOFT
PRODUCTS AND ONLINE SERVICES**

This Master License Agreement ("MLA" or "this agreement") sets forth the Department of Navy (DON) license terms BPA No. *N66001-18-A-0006* (the "BPA") applicable to the Microsoft Products and shall govern the use of any and all Microsoft products licensed by the DON and acquired from the Microsoft Government Partner under the terms of the BPA. The BPA is a DoD Enterprise Software Agreement (ESA) executed under DoD ESI in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) Section 208.74.

1. Enterprise Language.

The parties agree that any entity that falls under the Offices of the Secretary of the Navy; Chief of Naval Operations; Headquarters, Marine Corps; the entire operating forces, including naval aviation, of the Navy and the Marine Corps, and the reserve components of those operating forces; all field activities, headquarters, forces, bases, installations, activities and functions under the control or supervision of the Secretary of the Navy; and the US Coast Guard when it is operating as a service in the Navy may license Products under this Agreement by executing an Order under the applicable BPA. The terms and conditions of this Agreement become part of the purchase document without further need for execution. All parties agree that this MLA supersedes and take precedence over the terms included in any attachment or Order except as otherwise agreed to by Microsoft and Enrolled Affiliate placing the Order. Unless expressly stated otherwise, in the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) the GSA Schedule contract (except for any Microsoft End User License Agreement included or otherwise incorporated into the Government Partner's GSA Schedule contract, in which case, the terms of this MLA shall control); (2) This MLA; (3) DON ESL BPA (4) Orders; (5) Microsoft Product Terms; and (6) Microsoft Online Services Terms.

2. Definitions.

In this agreement, the following definitions apply:

"Additional Product" means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

"Affiliate" means any entity authorized to buy Products off of the BPA.

"Azure Government Services" means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

"Click-to-Run" is a Microsoft streaming and virtualization technology that can be used to install and update Office products.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service and is based, in part, on the SRG requirements for each such service.

"Compliance Trust Center Page" means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services.

"Day" means a calendar day, except references that specify "business day", for any reference in this agreement or an Enrollment.

"Defense Article" has the meaning provided in 22 C.F.R. § 120.

"Defense Service" has the meaning provided in 22 C.F.R. § 120.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services.

"Enrollment" means the document that Government Partner submits to Microsoft to place orders for Enrolled Affiliate.

"Enrolled Affiliate" or "you" means any entity under a specific enrollment or entity authorized by the DoD that enters into a Government Contract for Products with Government Partner.

"Enterprise" means Enrolled Affiliate and the Affiliates listed on an Enrollment.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Government Partner chooses to order License(s) under an Enrollment for Enrolled Affiliate. Enterprise Products must be licensed for all Qualified Devices or Qualified Users.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Fixes" means Product fixes, modifications or enhancements or Microsoft derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Government Contract" means an Order issued against the Government Partner's BPA.

"Government Partner" or "DoD ESI Reseller" means the entity from whom you place your order for Products under the Government Contract.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Intelligence Community" is any of the intelligence community (IC) organizations which as the date of this Agreement are: (1) Office of the Director of National Intelligence (ODNI), (2) Central Intelligence Agency (CIA), (3) Defense Intelligence Agency (DIA), (4) National Security Agency (NSA), (5) National Geospatial- Intelligence Agency (NGA), (6) National Reconnaissance Office (NRO), (7) U.S. Air Force Intelligence, Surveillance, and Reconnaissance (USAF ISR), (8) U.S. Army Intelligence (G-2), (9) Office of Naval Intelligence (ONI), (10) Marine Corp Intelligence Activity (MCIA), (11) Department of Energy's Office of Intelligence and Counter-Intelligence, (12) Department of Homeland Security's Office of Intelligence and Analysis, (13) U.S. Coast Guard Intelligence, (14) Department of Justice's Federal Bureau of Investigation, (15) Drug Enforcement Agency's Office of National Security Intelligence, (16) Department of State's Bureau of Intelligence and Research, and (17) Department of the Treasury's Office of Intelligence and Analysis.

"ITAR" means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

"ITAR-controlled data" means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

"ITAR Covered Services" means, solely with respect to this Amendment, the (i) Office 365 Government Defense services; and (ii) Azure Government services, listed as being in the scope for the ITAR at <https://www.microsoft.com/en-us/TrustCenter/Compliance/itar> or its successor site.

"License" means Enrolled Affiliate's right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis ("Subscription License" or "SL"). Licenses for Online Services will be considered Subscription Licenses.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Office 365 Service Descriptions" means the Service Descriptions for Office 365 US Government Defense, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 US Government Defense), or at successor sites Microsoft later identifies.

"Office 365 US Government" means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

"Office 365 US Government Defense" means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

"Online Services" means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

"Online Services Terms" means the additional terms that apply to Enrolled Affiliate's use of Online Services published on the Volume Licensing Site and updated from time to time.

"Order" means the order placed by you to the Government Partner under the Government Partner's BPA.

"Product" means all products identified in the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Availability of Online Services and other web-based services, including pre-release or beta versions may vary by region.

"Product Terms" means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at <https://www.microsoft.com/en-us/Licensing/product-licensing/products.aspx> and is updated from time to time. The Product Terms in effect as of the date of this Agreement are attached for reference purposes as Attachment 5 to the BPA. The parties agree that the Section titled License Terms; subsection Universal License Terms of the Product Terms shall remain constant throughout the term of this agreement even if subsequent versions of the Product Terms change unless agreed to in writing by the parties.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"SLA" means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

"Software Assurance" means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

"Technical Data" has the meaning provided in 22 C.F.R. § 120.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights," means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Use" or "run" means to copy, install, use, access, display, or run.

3. Licenses for Products.

Upon Microsoft's acceptance of Government Partner's Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

- a. **License Grant.** By accepting an Enrollment, Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate's continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. Microsoft reserves all rights not expressly granted in this agreement.

b. **Additional License Rights.**

- i. Users licensed for the Office 365 Defense E3/E5 bundle in the DON ESL BPA Product and Price List shall have use rights equivalent to a Client Access License (CAL)/ Management License (ML) for the purpose of accessing equivalent on premises Exchange, SharePoint, Skype, and server Products base and additive functions, where applicable, across multiple networks within the Enterprise.

Per our Product Terms:

CoreCAL bridge includes the access rights to the following products: Windows Server, System Center Endpoint Protection, and System Center Configuration Manager

Enterprise bridge CAL includes the access rights to the following products: Windows Server, Windows Server RMS, System Center Endpoint Protection, System Center Configuration Manager, and Advanced Threat Analytics.

- ii. In consideration of the Enrolled Affiliate's deployment schedule, ramped pricing for Microsoft O365 E3 is being provided on the Channel Price Sheet for the three year term of the Agreement. These unit prices shall be fixed for the term of the Agreement even if the actual deployment of Enrolled Affiliate's Users varies.
- iii. Microsoft agrees that via dual use rights as noted above, with regard to user licenses for the E3/E5 suite version of O365 US Government Defense ("Office 365 Defense") Enrolled Affiliate would have on-premises access to productivity servers across multiple networks within the Enterprise (e.g. NIPR, SIPR, DNR, and CANES).
- iv. Subject to the Product Terms, the Enrolled Affiliate will have the right to download and use two (2) copies of Office Professional Plus per paid O365 E3/E5 subscription which will be received via the VLSC. The rights to Office Professional Plus for both copies will be perpetual.
- v. At such time that the Enrolled Affiliate requires a new, segregated O365 environment/tenant for SIPR, RDT&E, etc. and is consuming cloud services via an O365 service new Licenses will be required for access to those environments/tenants and the associated Cloud services. Microsoft agrees that if separate Licenses are required for the new segregated environment for users already consuming an O365 E3/E5 License, the price for those additional Licenses for these users shall be negotiated in good faith by the parties whereby Microsoft will consider the investment already made by the DON for those users in O365 when negotiating any such discount.
- vi. With regard to the Office 365 ProPlus component of the E3 or E5 bundle of Office 365 Defense, the Enrolled Affiliates may apply the subscription use right associated with the Office 365 ProPlus procured under the initial Office 365 Defense E3/E5 suite, including 5 PCs or Macs, 5 tablets, and 5 phones, to have access to Click-to-Run access Office 365 ProPlus across their additional Enterprise networks/tenants subject to the Product Terms/Online Service Terms during the term of this Agreement.

- vii. Enrolled Affiliate shall provide the counts of Windows Server and System Center processors (including the number of processors per server), and these quantities will receive the standard conversion rate for these licenses, which is as follows: processor Licenses will be exchanged for a minimum of 8 two-core pack Licenses (16 core Licenses) which is 8 cores per processor, that will be included for renewal of Software Assurance in this Agreement.
- viii. As a one-time exception, Enrolled Affiliate will have through July 31, 2018 to provide the actual quantities of cores per processor through the necessary conversion documentation. Enrolled Affiliate will then receive License grants for the actual number of cores per processor. To be eligible for these grants, Enrolled Affiliate will pay the Software Assurance for any additional cores from the effective date of this agreement.
- ix. Microsoft agrees that the DON will assess its baseline user licensing counts with the assumption that all users have access to the DON's enterprise networks during the term of this agreement. Microsoft further acknowledges that the quantity of user licenses under the specific Navy Enterprise Network (NMCI or One-Net) enrollment may not include all Qualified Users on the network and that a portion of those Qualified Users are included and funded under other DON enrollments.
- x. Microsoft agrees that Enrolled Affiliate may have the need for License configurations that support more than one user profile. These proposed profiles would be submitted by the DON and if approved by Microsoft based on the specific use case, they would be an exception from the Qualified User definition. Licensing configurations may include Client Access Licenses (CALs) or User based Desktop Licensing scenarios.
- xi. Enrolled Affiliate may be entitled to Microsoft Azure Hybrid Benefits as part of its Enrollment(s).
See Product Terms for information about Microsoft Azure Hybrid Benefits.
 - A. Microsoft Azure Hybrid Benefit for Windows Server. Enrolled Affiliate may use Windows Server Virtual Machines on Microsoft Azure and pay for the cost of compute only (the "Base Instance"). Each Windows Server processor License with SA, and each set of 16 Windows Server core Licenses with SA, entitles Enrolled Affiliate to use Windows Server on Microsoft Azure on up to 16 Virtual Cores allocated across two or fewer Azure Base Instances. Each additional set of 8 core Licenses with SA entitles use on up to 8 Virtual Cores and one Base Instance. Enrolled Affiliate may use Standard or Datacenter. Enrolled Affiliate must indicate that it is using Windows Server under the Azure Hybrid Benefit for Windows Server when creating or configuring a virtual machine on Azure.
 - B. Under the Microsoft Azure Hybrid Benefit for SQL Server, for each SQL Server License covered with SA ("Qualified License"), Customer may consume the Microsoft Azure Data Services identified in the table below in the indicated ratios. If a customer wishes to use Azure Hybrid Benefit for SQL Server to consume two or more Microsoft Azure Data Services, a separate set of Licenses must be allocated for each service. With Azure Hybrid Benefit for SQL Server, customers will not be charged for the usage of a Microsoft Azure Data Service, but they must still pay for the cost of compute (i.e., the base rate), storage, and back-up, as well as I/O associated with their use of the services (as applicable). Customers must indicate that they are using Managed Instance, Azure Data Factory SQL Server Integration Services, or SQL Server Virtual Machines under Azure Hybrid Benefit for SQL Server when configuring workloads on Azure. Customers may supplement workloads running under Azure Hybrid Benefit for SQL Server with fully metered Azure services.

- xii. **License Mobility for Server Products.** The following server Products may be eligible for migration into Azure or an authorized License Mobility Partner. See Product Terms for additional License Mobility rights and benefits.
- Exchange Servers - (All Editions of server licenses)
 - Project Server (Server License only)
 - SharePoint Server and Office Audit and Control Management Server (server licenses only)
 - Skype for Business Server Licenses
 - SQL Server Licenses (all editions except Parallel Data Warehouse)
 - Systems Center Server (all editions)
 - Visual Studio Team Foundation Server (server licenses only)
 - Windows Server (External Connector only)
- xiii. **License Mobility for Client Products.** Enrolled Affiliate may use Remote Desktop Service (RDS) User Client Access Licenses (CALs) and User Subscription Licenses (SLs) with Windows Server software running in Operating System Environments (OSEs) dedicated to its internal use on either Microsoft Azure Platform Services or the shared servers of a License Mobility Partner through the Government Partner for which the Enrolled Affiliate has completed and submitted the attached License Verification form. Other than administrative access by Customer's License Mobility Partner through the Government Partner, no other party may access the OSE(s). For any CAL or User SL Enrolled Affiliate has used in this manner, it may later move to Microsoft Azure Platform Services or a new License Mobility Partner through the Government Partner, but not sooner than 90 days after it initiated use in the environment it is leaving.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrollment is renewed or Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except where (1) Licenses, and/or Software Assurance which has been paid for in its entirety up front (i.e. lump sum payment), and (2) as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- d. **Applicable Use Rights.**
- i. **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.
 - ii. **Online Services.** For those subscriptions that are part of the initial order (executed on the effective date of the Enterprise Agreement) the Use Rights in effect as of June 2018 will apply for the subscription term. For additional Online Services (i.e., not on the initial order) added after the initial order, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.
 - iii. **More restrictive use rights.** If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise's use of that Product during the term.

- e. **Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- f. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each perpetual License and subscription with dual rights ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not to use the new version immediately.
 - i. Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
 - ii. If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses previously covered under other Enterprise Agreements or procured with SA under a prior DoD ESI BPA will never lose perpetual rights to the software version released at the end of the Agreement and shall always have the ability to revert back to the previous license version prior to joining the current agreement.
 - iii. When transitioning to subscription-based cloud licensing (Office365) the DoD and its affiliates may drop Software Assurance coverage on all corresponding licenses in any subsequent agreement without losing software assurance benefits.
- g. **License confirmation.** The Government Contract, the Order, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses ordered by the Government Partner under an Enrollment for an Enrolled Affiliate.
- h. **Price Protection.** As a one-time special condition, Microsoft agrees that upon renewal of this Enrollment(s), pricing for Enrolled Affiliate(s) for the Online Services identified in the Government Partner's Channel Price Sheet, Pricing and Usage Year 3 section will not increase by more than 12% in the renewal provided that, the user commitment for Enrolled Affiliate(s) does not fall below 736,000 Users. The terms and conditions set forth in the preceding sentence apply only for the initial Renewal Term in June 2021, it will not be included in any subsequent renewals beyond the Initial and Microsoft is under obligation to grant this concession in the future.
- i. **Indirect Access.** In the event Enrolled Affiliate incurs fees created by instances of indirect access to on-premises Microsoft Server products or Microsoft Online Services which the Enrolled Affiliate had no actual knowledge of, Microsoft will work with Government Partner and the Enrolled Affiliate in good faith to determine how to mitigate such fees.
- j. **Reorganizations, Consolidations, and Privatizations.** In the event that the number of Licenses covered by an Enrollment changes by more than the following percentages below as a result of reorganization, consolidation, or privatization by any member of the Enterprise, Microsoft will work with the Government Partner in good faith to determine how to accommodate the Enterprise's changed circumstances:
 - 10% for Enrollments with more than 40,001 Licenses
 - 20% for Enrollments with 40,000 or less Licenses
- i. Possible accommodations may include; the potential for a flexible licensing strategy that promotes continuity of operation and may allow decreases in License/subscription counts annually for Licenses throughout the lifetime of the

Agreement, provided such decreases are verified by Licensor through a formal software deployment assessment in accordance with the Verifying Compliance section below.

- ii. Any allowances granted for quantity adjustment would only occur at the next anniversary and must be completed and mutually agreed to by the parties in by 01 April of the year prior to the given anniversary to allow appropriate time for processing and proper invoicing (i.e., a Year 2 adjustment for June 2019 anniversary must be completed and agreed to by 01 April 2019).
- g. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.
- h. **Program updates.** Microsoft may make a change to the Enterprise and/or Enterprise Subscription programs that will make it necessary for Enrolled Affiliates to enter into a new agreement and Enrollments with Government Partner at the time of an Enrollment renewal. If any such updates occur during a current contract, including option periods, such change(s) will be made at no increase in cost to Enrolled Affiliate: all pricing in the current contract, including contract options will be honored despite any such change(s). Microsoft agrees that any change in terms which may negatively impact the Department of Defense will be negotiated between the parties before incorporation into any new agreement and Enrollment.

4. Making copies of Products and re-imaging rights.

- a. **General.** Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Government Contract and the Order.
- b. **Copies for training/evaluation and back-up, research and development (research labs).** For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a DON approved training facility or environment for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Product for a 60 day evaluation period with no obligation to later purchase evaluated products, and (3) use one complimentary copy of Enterprise Products and additional Products on 1% of the Enrolled Affiliate's Qualified Desktops or Qualified Users for research and development purposes and (4) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - i. Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - ii. The Product, language, version and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

- iii. Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type from the separate source.
- iv. Enrolled Affiliate must adhere to any Product specific processes or requirements for re-imaging identified in the Product Terms.
- v. Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.

5. Order Requirements

- a. **Minimum Order requirements.** The Enrolled Affiliate must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products, inclusive of all enrollments.
- b. For Office 365 US Government Defense Online Services, Enrolled Affiliate must include a minimum of 250 user subscription Licenses of an Enterprise Online Service for the initial order inclusive of all Enrollments.
- c. **Enterprise Commitment.** If ordering any Enterprise Products, Government Partner's order on behalf of Enrolled Affiliate must include coverage for all Qualified Users or Qualified Devices, depending on the License Type, of one or more Enterprise Products or a mix of Enterprise Products.
- d. **Additional Products.** Upon satisfying the minimum order requirements above, Government Partner on behalf of Enrolled Affiliate may order Additional Products and Services.
- e. **Grace Period at the beginning of the contract for Licenses added to the Enterprise.** Due to decentralized ordering, Enrolled Affiliate shall have a grace period for executing Order(s) renewing SA on perpetual licenses and are set to expire on June 01, 2018. The Government's processing time to place renewal orders for SA on these Licenses is June 15th, 2018. After this processing time ends, Software Assurance for perpetual licenses that expired on June 01, 2018 will no longer be allowed to be renewed without the repurchase of a License and SA. Microsoft may consider waiving the repurchase requirement on a case-by-case basis.

6. Transferring, assigning and reassigning licenses.

- a. **License transfers.** The Enrolled Affiliate may only transfer fully-paid perpetual licenses to:

- i. a Federal Agency,
- ii. an Affiliate, or
- iii. a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of an Affiliate or a division of an Affiliate, (2) Base Realignment Closure, or (3) a consolidation involving Enrolled Affiliate or an Affiliate.

Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable. All such transfers must be made in accordance with this section. No other transfers are permitted.

- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any license transfer not made in compliance with this section will be void.

c. **Reassignments.** Enrolled Affiliate acknowledges that Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Product Terms.

- i. Licenser understands that the Enrolled Affiliate is requiring Government Partner to allow for flexibility in the reassignment of Licenses from one Department of Navy command to another command and these reassignments may be between Enrollments under this Agreement.
- ii. The reassignment of licenses will be without administrative cost to any party involved in the assignment of the licenses, provided that the license are current or made current with regard to Licenser annual SA maintenance, and the Licensee does not remarket or otherwise intend to resell the licenses. Licensee will complete any reasonably required Licenser documentation and notification required to facilitate the reassignment of license and continuation of support for the reassigned licenses.

d. **Effect of reassignment.** The Enrolled Affiliate acknowledges that reassignments made in accordance with this Section will not be reflected in the Volume Licensing Service Center (VLSC). It will be the responsibility of the Government Partner to ensure accurate accounting for the reassignment and invoicing adjustments.

e. **Licenses with Software Assurance.** In the event that Licenses with Software Assurance have not expired prior to a new contract/enrollment being established, Microsoft will work with Enrolled Affiliate, in good faith, to determine how to accommodate this scenario. Following are possible courses of action:

- i. Roll the current product license into the new contract with prorated Software Assurance coverage and allow the original Software Assurance coverage to expire naturally.
- ii. In the event of termination of the BPA, the Enrolled Affiliate will be entitled to Software Assurance coverage for the duration of such coverage for which payment has been made in full.

7. **Software End-of-Life Requirements.** Microsoft may discontinue support for existing Products from time to time. If Microsoft discontinues support for a Product, Microsoft will inform Enrolled Affiliate six months in advance of the discontinuation by posting the information at <http://support.microsoft.com/lifecycle> or any successor site.

8. **Use, ownership, rights, and restrictions.**

a. **Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.

- i. **Fixes.** Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fixe will apply.

b. **Non-Microsoft software and technology.**

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

- i. Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft's licensing terms.

- ii. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.
- iii. Restrictions Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.
- c. **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.

9. Confidentiality.

- a. "Confidential Information" is non-public information that is designated "confidential" or "proprietary" or that a reasonable person should understand is confidential or proprietary, including Customer Data. Confidential Information includes, but is not limited to, information that is defined under EO 12356; however, use of the term "Confidential" in this paragraph does not mean that all information marked as confidential in accordance with this paragraph is confidential as defined in EO 12356. Confidential Information does not include information that: (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party's business, products or services. Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.
- b. A party may disclose the other's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- c. Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.
- d. These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.
- e. Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's

confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft's confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

10. Privacy and Compliance with Laws.

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this MLA and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights.
- c. For all Government Community Cloud Services, Microsoft will only transfer, store and process Customer Data in data centers located in and under the exclusive jurisdiction of the United States as set forth in and in accordance with the applicable System Security Plan (SSP) upon which the FedRAMP ATO for the relevant Online Service is based.
- d. **U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.

11. Warranties.

a. Limited warranties and remedies.

- i. **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.
- ii. **Online Services.** Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

The remedies above are Enrolled Affiliate's sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. **DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

12. Defense of third party claims.

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that

arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of a Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this agreement; (vi) Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes provided free of charge.

- b. **Your agreement to protect.** Enrolled Affiliate agrees that it will not use Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf that Enrolled Affiliate knows infringes any third party's patent, copyright or trademark or make unlawful use of any third party's Trade Secret. In addition, Enrolled Affiliate will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.
- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.
- d. **Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.
- e. Notwithstanding the foregoing, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

13. Limitation of liability. To the extent permitted by applicable law, for each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident except in cases of loss, breach or damage to Customer Data where in these cases there is no limitation or exclusion of liability.
- b. **Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations; (2) defense obligations; or (3) violation of the other party's intellectual property rights.
- e. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this MLA under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

14. True-up Requirements

True-Up Order. Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Enrolled Affiliates bound by Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B) must not download software or use online services prior to executing an Order for the Products. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner in accordance with Section 15 Verifying Compliance.

- a. **Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- b. **Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- c. **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, and where allowed, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate's Government Partner.
- d. **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:
 - i. For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - ii. For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

- e. **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.
- f. **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled

Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- g. **Late true-up.** If the true-up order or update statement is not received when due:
 - i. Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and
 - ii. Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under an Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
 - i. For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
 - ii. If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

15. Verifying compliance.

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right to verify Enrolled Affiliate's and its Affiliates' compliance with the license terms for the Products, at Microsoft's expense, through a formal product deployment assessment such as a SAM Engagement or other similar process. Microsoft may require Enrolled Affiliate to complete Microsoft's self-audit process or run the Microsoft Assessment and Planning (MAP) Toolkit, relating to the Products Enrolled Affiliate and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance with the license terms for the Products.
 - i. All verification efforts undertaken in accordance with this Section shall comply with the Enrolled Affiliate's reasonable security and safety rules, policies, and procedures ("security rules"), provided that such security rules are applicable to the performance of the verification process(es); the Enrolled Affiliate makes such security rules available to Licensor prior to the commencement of the verification process(es); and such security rules do not modify or amend the terms and conditions of this MLA.
 - ii. When Microsoft determines the need to conduct a SAM Engagement as part of the verification process, Microsoft will request a meeting with the Enrolled Affiliate to review the engagement's purpose, objectives, requirements, and scope. Microsoft and the Enrolled Affiliate will mutually agree on SAM engagement rules and procedures, logistics, locations, points of contact, and determination of the approved asset discovery tool(s) that will meet the needs of the engagement. The Government Partner, in conjunction with Microsoft as a first tier subcontractor, will engage an independent third party such as an auditor or an approved Microsoft partner, as a second tier subcontractor, to conduct the SAM engagement, which will involve reviewing the Enrolled Affiliate's Software Asset Management (SAM) practices as it relates to Microsoft Products and provision of a current-state assessment relative to industry standards, and an actual deployment position for Microsoft software installed within the Enrolled Affiliate IT environments. Microsoft shall be responsible for paying the independent third party for such services and Enrolled Affiliate will not be invoiced for the performance of the SAM services by the third party.
- b. **Verification process and limitations.** Licensor will provide Enrolled Affiliate at least 90 days' notice of its intent to verify compliance. Unless specifically stated herein as a contract condition, Licensor will not verify compliance more than once in a 12 month

period and Microsoft shall be solely responsible for the costs Microsoft incurs in verifying compliance in accordance with this Section.

- c. **Licensors waive any and all entitlement to compensation from the auditor or partner for the assessment services provided.** Licensors intend that these services and associated terms be in compliance with applicable laws and regulations. It is specifically understood that all services and services deliverables provided as part of the assessment are for the sole benefit and use of the DON and are not provided to or for any individual government employee. It is further understood that the results of this engagement are not provided to Microsoft or the Government Partner. Any such independent auditor or approved Microsoft partner will be subject to a confidentiality obligation and subject to Enrolled Affiliate's security rules, which may include IA, and disclosure requirements. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Enrolled Affiliate must promptly provide the independent auditor or approved Microsoft partner with any information it reasonably requests in furtherance of the verification, including evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties.
- d. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, Microsoft through its Government Partner shall submit a quote within ninety (90) days to the Enrolled Affiliates for sufficient Licenses to cover such use. If material unlicensed use is found, (a) the Enrolled Affiliate and any of its Affiliates may be completely responsible for the price of the licenses, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act), and (b) the Enrolled Affiliate and any of its Affiliates must execute an Order to pay the quote submitted in accordance with the procedures set forth in the applicable BPA for additional Licenses within 60 days of quote receipt by a Contracting Officer. Spot discounts are encouraged and may be negotiated at the Order level. Notwithstanding the foregoing, nothing in this section prevents the government from disputing any quote submitted to the Enrolled Affiliate and any of its affiliates for non-compliance in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). Enrolled Affiliate shall also have the opportunity to offset any unlicensed use with the monetary value of any over licensing found in verification or self-audit.
- e. Licensors shall be liable for any damages arising out of or related to the independent auditor's or the approved Microsoft partner's performance of the verification engagement subject to the terms of this MLA.

16. Government Community Cloud.

When the Enrolled Affiliate orders Government Community Cloud Services, the following terms will apply:

- a. **Community requirements.** When an Enrolled Affiliate orders any Government Community Cloud Services, the Enrolled Affiliate certifies that all users in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Government Partner's or an Enrolled Affiliate's license(s) for Government Community Cloud Services. Agency acknowledges that only Community members may use Government Community Cloud Services.
 - i. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this MLA.
 - ii. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud

Services in the same domain.

- iii. Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.
- b. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - i. Government Community Cloud Services will be offered only within the United States.
 - ii. Additional European Terms, as set forth in the Use Rights, will not apply.
 - iii. References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.
 - iv. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.
 - v. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.
 - vi. Office 365 US Government strives to notify customers in advance of any change that requires the administrator to take action to keep the service functioning normally. Unless otherwise noted, Microsoft will provide a minimum of 30 days advanced notification via Message Center when an update may require admin action. Microsoft agrees to apply service credits to properly claimed downtime incidents even if the DON delays receiving service updates.
- c. Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 US Government Defense and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 US Government Defense and Azure Government Services comply.
- d. **Operational and ordering considerations for Office 365 US Government Defense.**
 - i. Enrolled Affiliate's Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to, called "reserved instances" which must be purchased in advance unless fiscal policy allows otherwise; however, Enrolled Affiliate acknowledges and agrees that it may only use the number of licenses it has ordered and that it must order licenses for every User account it assigns under the Service.
 - ii. Reserved Instances. Notwithstanding anything to the contrary in the Enrollment and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the Enrollment), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Enrolled Affiliate in conjunction with the Government Partner are responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

- iii. Enrolled Affiliate acknowledges that (i) availability of its Office 365 US Government Defense tenant may follow several weeks after its initial order, and (ii) the service components provided pursuant to its orders for "Suite" SKUs such as E1, E3, E5 and other higher level services as they may become available as listed in the Office 365 Service Descriptions, may differ from those components available in similar suites available in other forms of Office 365 Services.
- iv. The parties acknowledge that, as of the date this Agreement was executed, the Office 365 ProPlus "click-to-run" (C2R) feature is not yet available in Office 365 US Government Defense.
- v. Office 365 US Government strives to notify customers in advance of any change that requires the administrator to take action to keep the service functioning normally. Unless otherwise noted, Microsoft will provide a minimum of 30 days advanced notification via Message Center when an update may require admin action. Microsoft agrees to apply service credits to properly claimed downtime incidents even if the DON delays receiving service updates.

17. Virus, Malicious, Mischievous or Destructive Programming

- a. Microsoft warrants that it has established and regularly put in place procedures, in conformity with applicable and the most current industry standards, to guard against the inclusion of viruses, as defined below, in any Product provided under this agreement. A "virus" is defined as any computer codes, instruction data, or program that can or may in whole or part disable, materially alter, or damage any software, data, or computer hardware or otherwise interfere with or prevent use of a computer system. If notified by Government Partner in writing within ninety (90) days from the initial delivery (including initial download) of a Product that Government Partner or Enrolled Affiliate reasonably believes that the Product contains a virus, and if Microsoft confirms the same, then Microsoft will exercise reasonable efforts to (1) correct the Product, and (2) provide any resulting corrections to Government Partner/ Enrolled Affiliate, without charge, as soon as reasonable possible. If the foregoing options are not commercially reasonable Microsoft will refund any amounts Government Partner/Enrolled Affiliate paid in advance for unused or undistributed Product.
- b. If Government Partner/Enrolled Affiliate fails to notify Microsoft in writing within the ninety (90) day period described above, Government Partner/Enrolled Affiliate will be deemed to have accepted the Product and waived any claim for breach of this virus warranty. The foregoing does not apply to any user customizable features, or to any add-on features or products that have not been provided by Microsoft including but not limited to items such as macros, scripts, and custom programming or formatting features. The foregoing states Microsoft's entire liability and Government Partner/Enrolled Affiliates remedy for any breach described in this Section.

18. Temporary Use of Software During Times of Conflict and/or Natural Disaster.

- a. As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, Enrolled Affiliate may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of on-premises Products in addition to those previously licensed pursuant to this agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or Federal government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of

Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of U.S. government assets.

- b. For licenses connected to a DoD network server, on an semi-annual basis, Microsoft shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, Microsoft shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by Microsoft, the Enrolled Affiliate will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under the applicable Enrollment to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. Enrolled Affiliate agrees to use the TED Licenses in accordance with the terms contained in this MLA.
- c. In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on <http://www.microsoft.com> at such time.

19. Product Key Activation.

The Government Partner shall provide step by step process instructions for all software key activations, including Token Based Activation (TBA), Key Management Service (KMS), Multiple Activation Key (MAK), and Use Rights related to activation on its website. Instructions must also include the process for distribution and management of the keys, length and time required to activate keys, script(s) or code(s) required, delivery methods (i.e. via VLSC portal, hard copy), and key management/tracking tools for all CLINs.

20. Token Activation.

Notwithstanding anything to the contrary in this agreement or the Use Rights, each Enrolled Affiliate may activate Products that Government Partner ordered on behalf of Enrolled Affiliate(s) under the Enrollment using a cryptographic license package, consisting of a token issuance license and associated license files ("License Package"), issued for each Product to Government Partner on behalf of each Enrolled Affiliate or Enrolled Affiliate by Microsoft for the purpose of activation of such Product, provided that, Enrolled Affiliate (1) protects the License Package using all reasonable security measures, including but not limited to, encryption, access control lists, and marking any associated certificates, tokens and files as non-exportable; (2) agrees that a failure to properly secure the License Package will be considered a material breach of the BPA and this agreement; and (3) acknowledges that each Enrolled Affiliate may be required to use a new License Package for significant updates or releases of previously activated Products. Microsoft may provide directly or indirectly through Government Partner, instructions to Enrolled Affiliate(s) or Enrolled Affiliate(s) regarding the use of License Packages, and may update such instructions from time to time. All other provisions of this Agreement and the applicable Use Rights remain in full force and effect.

21. Multiple Activation Key (MAK) Activation.

Microsoft shall provide the quantity of MAK [keys] that equals the number of software licenses Enrolled Affiliate purchased from the Government Partner. The specific product keys will be made available through the VLSC site. Microsoft acknowledges that MAK activations in DoD tactical environments may be repeated due to multiple short-term deployments and will require additional key quantities to conduct those missions.

22. DoD Secure Host Baseline (SHB) (formerly known as DoD Unified Master Gold Disk (UMGD) Distribution).

Licensor grants to the DoD permission to reproduce and distribute a copy of the Validation Authority (hereafter "licensed software") on the SHB to the Defense Information Systems Agency (DISA) for hosting, distribution to and access and use by DoD Component agencies and the Services (i.e. Enrolled Affiliates) who have an active license to use the licensed software.

The SHB shall only be distributed by licensee and/or DISA under the following terms and conditions:

- a. The DoD Component agency and the Services receiving the SHB shall already have a current and active license with the Licensor to use the licensed software;
- b. the DoD Component agency and the Services shall have a "Unique License Key" provided by Licensor solely to access the licensed software on the SHB for use only under the terms and conditions of the DoD Component or Services license agreement with Licensor;
- c. the DoD Component agency and Services shall keep the "Unique License Key" confidential and shall not provide it to any individual or entity, including but not limited to other DoD Component agency, Service or other DoD Department;
- d. the DoD shall be solely responsible for all expenses incurred in the reproduction and distribution of the licensed software on the SHB;
- e. use of the licensed software other than in connection with the SHB and as provided in the license agreement governing the DoD Component or Service is strictly prohibited;
- f. all licenses are appropriately ordered and paid for by the using agency;
- g. contractors receiving the SHB may not use their commercial licenses for Microsoft Products (defined as licenses procured under the contractor's Enterprise Agreement (EA)) to account for any licensing requirement in this Section. The Enrolled Affiliate must provide and account for SHB licenses provided to non-government entities under the appropriate Enrollment.

23. Foreign Military Sales (FMS) License Transfers to Foreign Governments.

Microsoft grants to the Enrolled Affiliate permission to use Microsoft Products for commercially available configurations incorporated or installed on defense articles to be transferred from Enrolled Affiliate to foreign governments through the FMS program. Enrolled Affiliate may complete the transfers if the appropriate FMS enrollments are used and that the recipient of the licensed Product(s) hold valid licenses with active Software Assurance for the Microsoft Product(s).

24. Special Access Program (SAP) use of a common Microsoft Multiple Activation Key (MAK) for deferred activation for products purchases through multiple DoD Enterprise License agreement (ELAs).

Microsoft permits the Special Access Program (SAP) to use a common Microsoft Activation Key (MAK) to build a Windows 10 baseline image to deploy to computers managed by the SAP CIO. Microsoft Products used on SAP computers will be licensed through Enterprise License Agreements held by DoD Entities. The SAP CIO may operate these computers without connecting them to the Internet or other Microsoft activation servers, so the computers may remain in a "deferred activation" state for the entire asset life-cycle. Microsoft agrees that it is acceptable to use a valid DoD MAK code to create the SAP disk image and load the software onto the SAP computers. DoD Entities using Microsoft Products included in the image must be properly licensed at all times.

25. Software Titles Incorporated by this License Agreement.

All software and online titles offered through Microsoft's Enterprise Agreement Volume License Channels will be incorporated into the BPA and subject to this MLA where applicable and any and all other software or software titles which may be added through Microsoft's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Microsoft may acquire in the future whose software is offered by Microsoft to the US Federal Government.

26. Software Asset Management & ISO-IEC 19770:2015 Series.

Microsoft will provide information about a product's compliance with ISO 19770-2 and ISO 19770-3 upon request. Any requirements regarding ISO standards for products provided under any particular Order must be expressly agreed to in such Order and included in the Enrollment.

27. Documents Incorporated By Reference.

If any document incorporated by reference into this MLA, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein (including third party software license agreements), contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this MLA, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

28. GFE Non-Portable Computer Use Rights.

DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346 which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in Teleworking to the maximum extent possible without diminished employee performance. Enrolled Affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both. Upon request from Microsoft, the Enrolled Affiliate will provide a written report detailing the number of Enrolled Affiliate employees using portable use rights on GFE issued non-portable computers under the Teleworking policy.

This section does not apply to Online Services.

29. Data Sharing/Transfer.

Data transfer is Batch Processing, Multiplexing and Flat File Environments. The parties agree that as long as an authorized user/device is properly licensed in accordance with this Agreement, the transfer, access, and manipulation of data or the sharing of data is unrestricted for authorized users associated with the DoD missions. This agreement also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.

This section does not apply to Online Services.

30. DoD Enterprise License Agreement.

The parties agree that in the spirit of cooperation, there may be an instance, during the course of this BPA, where the DoD desires a DoD-Wide Microsoft Enterprise Agreement. The parties agree to engage in good faith discussions about implementing a mutually beneficial DoD-Wide Enterprise Agreement, which could incorporate the terms contained in this agreement. These discussions may also address issues such as legacy licenses and the accompanying support, right-sizing the enterprise, and other issues. Microsoft makes no guarantees to honor any legacy pricing or concessions in a Department wide Agreement. All pricing would be based on the License position of the entrants, current price list pricing, and other items to be negotiated at time of Agreement execution.

31. Federal Risk and Authorization Management Program (FedRAMP) and Department of Defense Cloud Computing Security Requirements Guide (DoD CC SRG).

Microsoft will seek to secure and use commercially reasonable efforts to maintain, for the term of any Order for Online Services, a provisional Authority to Operate (P-ATO) at the relevant Federal Information Security Management Act (FISMA) Level required for the Services ordered from the FedRAMP Joint Authorization Board (JAB) or Federal Agency and a Level 5 DoD CC SRG accreditation from the Defense Information Systems Agency (DISA) for the Azure Government Services that are listed at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> <http://azure.microsoft.com/en-us/support/trust-center/compliance/> and the Office 365 US Government Defense, but are not provided as "Preview," "Beta," or other pre-release.

32. International Traffic in Arms Regulations (ITAR) Controls and Requirements

If Enrolled Affiliate's Customer Data includes ITAR-controlled data then the following additional terms and conditions will apply:

a. Enrolled Affiliate Prerequisites

- i. Enrolled Affiliate is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.
- ii. Enrolled Affiliate acknowledges that the ITAR Covered Services ordered by Enrolled Affiliate under the Enrollment enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which Enrolled Affiliate's administrator(s) will manage and configure the ITAR Covered Services.
- iii. Enrolled Affiliate is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for its End Users' use of ITAR Covered Services, together with any add-ons, as Enrolled Affiliate determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Enrolled Affiliate and not generally applicable to Microsoft as an IT service provider.
- iv. Enrolled Affiliate acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Amendment. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Enrolled Affiliate elects to provide to the Microsoft technical support organization, if any, or data provided by or on behalf of Enrolled Affiliate to Microsoft's billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Amendment. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

b. Special Terms.

i. ITAR Covered Services.

The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Enrolled Affiliate's preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Enrolled Affiliate should review applicable services documentation. Enrolled Affiliate's compliance with the ITAR will be dependent, in part, on Enrolled Affiliate's configuration of the services and adoption and implementation of policies and practices for its End Users' use of ITAR Covered Services. Enrolled Affiliate is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

ii. Personnel.

Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services will be limited to U.S. persons, as that term is defined in the ITAR. Enrolled Affiliate may also authorize Microsoft personnel and contractors to access its Customer Data. Enrolled Affiliate is solely responsible for ensuring any such authorization is permissible under the ITAR.

iii. Use of Subcontractors.

As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls, which are documented in the OST and/or the System Security Plan submitted as part of the ATO, at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft's policies, including without limitation the geographic restrictions and controls selected by Customer in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations.

iv. Notification. The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:

- A. Enrolled Affiliate acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Enrolled Affiliate's control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Enrolled Affiliate. If Enrolled Affiliate becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Enrolled Affiliate will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.
- B. If, subsequent to notification of a Security Incident by Microsoft, Enrolled Affiliate determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Enrolled Affiliate's responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Enrolled Affiliate determines such notification is required under applicable law or regulation or Enrolled Affiliate's internal policies.
- C. If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.

33. Miscellaneous.

- a. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- b. **Management and Reporting.** Enrolled Affiliate must provide and manage account details e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.
- c. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

- d. **Assignment of Agreement.** Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- e. **Use of contractors.** Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.
- f. **Survival.** All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.
- g. **Privacy and Compliance with applicable Laws, privacy and security.** Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that is not also generally applicable to information technology services providers.
- h. **Disputes.** Any breach of this MLA, including Enrolled Affiliate's obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).
- i. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <https://enterprise.microsoft.com/en-us/industries/government/section-508-vpats-for-microsoft-products/>.
- j. **Shrink-wrap and Click-through Agreements.** No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under this MLA shall apply in place of, or serve to modify any provision of this MLA, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this MLA, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptances of agreements and renewals shall be executed in writing.
- k. **Publicity/Advertisement.** Microsoft must obtain the DoD approval prior to issuing an advertisement, endorsement, or any other type of publicity identifying DoD as a customer. This includes the use of any DoD trademark or logo.
- l. **License Use Territories.** The products licensed under this Agreement are for use on any DoD civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
- m. **Net-Centricity.** DoD is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cionii/docs/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services.
- n. **Choice of Law/Venue.** This Agreement shall be governed by and construed in accordance with the substantive laws of the United States Code, US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement (DFARS), without regard to principles of conflict of laws.

- o. **Termination of Government Partner EA on behalf of Enrolled Affiliate.** In the event of a termination of an agreement between Licensor and Government Partner during the term of the Agreement, Licensor will continue to provide the products/services subject to the same terms and conditions through a follow-on contract for the remaining period with an authorized DoD ESI Reseller. DoD license grants or License rights that have been purchased and paid for will be transferred to the new agreement and any remaining support/maintenance will be transferred without any fees by the Licensor.
- p. **Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement.

Licensor acknowledges and agrees to the terms and conditions of this Master License Agreement and that these terms and conditions shall supersede and take precedence over the terms and conditions of any attachment to the DON ESL BPA.

IN WITNESS WHEREOF, Licensor has executed and approved this Master License Agreement on the date indicated below.

Licensor: Department of Navy

Licensor: Microsoft Corporation

Lynda Hall 5/3/18
Signature Date

Shirley Snyder 4-27-2018
Signature Date

Lynda Hall
Printed Name

Shirley Snyder
Printed Name

Microsoft
Microsoft Corporation

Special Agent APR 27 2018
Title

Shirley Snyder
Duly Authorized on behalf of
Microsoft Corporation

Contracting Officer
Title

By signing this Agreement, the person signing on behalf of Licensor certifies he/she has been vested with the power and authority to bind Licensor.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

DoN Microsoft MLA.docx	CTM	CTM-CPT-CTC-AGR- OPT	BD
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